

**STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105**

██████████, 2024  
Signature Confirmation

Case: ██████████  
Client: ██████████  
Request: 237886

**NOTICE OF DECISION**

**PARTY**

██████████  
██████████  
████████████████████

**PROCEDURAL BACKGROUND**

On ██████████ 2024, the Department of Social Services (the “Department”) issued ██████████ (the “Appellant”) a *Notice of Action* adjusting his Community First Choice personal care assistant (“PCA”) hours to 43.75 hours per week effective ██████████ 2024.

On ██████████ 2024, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) received the Appellant’s request for an administrative hearing, by ██████████, the Appellant’s legal guardian and sister.

On ██████████ 2024, the OLCRAH scheduled an administrative hearing for ██████████, 2024.

On ██████████ 2024, in accordance with sections 17b-60, 17b-61 and 4-176e to 4-189, inclusive, of the Connecticut General Statutes, OLCRAH held an administrative hearing by telephone and remote conferencing. The following individuals participated:

██████████, Legal Guardian (sister)  
Eric Bulewich, LMSW, Community First Choice, Department Representative  
Cynthia Cartier, JD, LLM, Department Counsel<sup>1</sup>  
Janette Steward, MSN, RN, Community First Choice, Department Witness  
Amy Santos, Connecticut Community Care, Department Witness  
Alexandra C. St. Germaine, Connecticut Community Care, Department Witness  
Eva Tar, Fair Hearing Officer

The hearing record closed ██████████, 2024.

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<sup>1</sup> Attorney Cartier was sworn in and provided testimony.

## **STATEMENT OF ISSUE**

The issue is whether the Department correctly determined that the Appellant was eligible to receive 43.75 hours per week in PCA services through Community First Choice.

## **FINDINGS OF FACT**

1. On [REDACTED] 2015, the Centers for Medicare & Medicaid Services approved the Department's proposed amendment to the State Plan to implement a Community First Choice State Plan Option to provide home and community-based attendant services and supports. (Dept. Exhibit 1)
2. Connecticut Community Care, a community action agency, is the Department's contractor for assessing whether Community First Choice participants require PCA services. (Santos Testimony)(Dept. Exhibit 4)
3. Connecticut Community Care employees complete Universal Assessment Outcome Forms ("Universal Assessment(s)") to confirm an applicant's or recipient's institutional level of care and level of need. (Dept. Exhibit 4)
4. The Appellant is [REDACTED] years old. (Dept. Exhibit 4)
5. The Appellant uses a wheelchair. (Rivera Testimony)
6. The Appellant has the following diagnoses: [REDACTED]. (Dept. Exhibits 4 and 6)
7. The Appellant has swallowing issues, all his teeth have been removed, and he requires food to be portioned in small bites to prevent choking. (Dept. Exhibit 6)
8. The Appellant requires hands-on assistance with dressing, undressing, bathing, showering, grooming and personal care, toileting, eating, transferring, and changing positions in a bed or chair. (Dept. Exhibit 6)
9. The Appellant requires assistance to take medications; use the telephone; complete household chores; meal planning and shopping; preparing and cooking food; budgeting; paying bills or managing money; and transitioning from one activity to another. (Dept. Exhibit 6)
10. The Appellant curses when speaking; throws himself off his chair and does not allow people to help him up; refuses to eat; bangs his head; pulls hair; and attempts to bite and hit his caregivers. (Dept. Exhibit 6)
11. In 2023, the Community First Choice budgeted the Appellant 60 hours per week of PCA services to address the Appellant's activities of daily living (ADLs) and his instrumental activities of daily living (IADLs). (Department Representative Testimony)

12. The Appellant has two PCAs: one works five hours per day, seven days per week; the other works three to four hours per day, five days per week for a combined total of 60 hours per week. (Legal Guardian Testimony)
13. The Appellant's PCAs regularly take the Appellant off the bus, feed him, change him, socialize with him, and take him to appointments. (Legal Guardian Testimony)
14. At the time that Community First Choice first budgeted the Appellant 60 hours per week of PCA services, the Appellant was "known" to the Department of Developmental Services ("DDS") but had not been assessed by DDS and was not then active on a DDS Waiver. (Santos Testimony)
15. The DDS Waiver is a Medicaid waiver; DDS acts as a Medicaid operating partner under a Memorandum of Understanding with the Department. (Hearing summary)
16. In 2024, DDS granted the Appellant 30 hours per week of DDS Waiver services to apply toward a day program to support the Appellant's IADLs. [REDACTED] Testimony)
17. The Appellant participates in a day program six hours per day, five days per week through the DDS Waiver. (Legal Guardian Testimony)
18. On [REDACTED] 2024, a Connecticut Community Care Universal Care Manager completed a Universal Assessment of the Appellant to assess his level of need for participation in Community First Choice. (Dept Exhibit 4)
19. The Universal Care Manager affirmed that the Appellant required total dependence with respect to all his ADLs and recommended Community First Choice reduce the Appellant's PCA budget to 43.75 hours per week. (Dept. Exhibits 4 and 5)
20. The record is silent as to whether the Universal Care Manager recommended a budget exception by submitting a completed *Assessment Budget Exception Form* from Appendix D of the 2016 DRAFT Community First Choice Operating Manual.<sup>2</sup> (Dept. Exhibits 4 and 5) (Hearing record)
21. On [REDACTED], 2024, the Department issued a *Notice of Action Community First Choice Program Service Budget Reduction* to the Appellant and the Legal Guardian reducing the Appellant's Community First Choice Individual Budget to 43.75 PCA service hours per week effective [REDACTED] 2024. (Dept. Exhibit 5)
22. In 2024, Community First Choice PCA service hours to complete an individual's ADLs are capped at 43.75 hours per week for those individuals who also receive DDS Waiver services for IADLs. (Dept. Exhibits 2 and 8) (Steward Testimony)

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<sup>2</sup> The 2016 DRAFT Community First Choice Operating Manual is the most recent version. The Department uses this document—in conjunction with Connecticut State Plan Amendment (SPA) No 15-012—to implement Community First Choice. (Department Counsel Testimony)

23. If the Appellant did not receive DDS Waiver services of 30 PCA service hours per week to meet his IADLs, Community First Choice would have budgeted the Appellant up to an additional 28.75 PCA service hours per week to meet his IADLs. (Department Counsel Testimony)
24. Connecticut General Statutes § 17b-61 (a) provides: “The Commissioner of Social Services or the commissioner's designated hearing officer shall ordinarily render a final decision not later than ninety days after the date the commissioner receives a request for a fair hearing pursuant to section 17b-60, ... , provided the time for rendering a final decision shall be extended whenever the aggrieved person requests or agrees to an extension....”

On ██████ 2024, the OLCRAH received the Appellant’s hearing request. The issuance of this hearing decision would have become due by no later than ██████ 2024, but for the extension of the close of the hearing record by eight days for the submission of relevant evidence. This final decision is timely.

### **CONCLUSIONS OF LAW**

1. Section 17b-2 of the Connecticut General Statutes in part designates the Department of Social Services as the state agency for the administration of the Medicaid program pursuant to Title XIX of the Social Security Act.

“The Department of Social Services shall be the sole agency to determine eligibility for assistance and services under programs operated and administered by said department.” Conn. Gen. Stat. § 17b-261b (a).

“The Commissioner of Social Services may make such regulations as are necessary to administer the medical assistance program....” Conn. Gen. Stat. § 17b-262.

**The Department has the authority under State statute to administer the Medicaid program and make regulations for the same.**

2. Title 42, Code of Federal Regulations (“C.F.R.”), Section 441.500 (a) implements section 1915 (k) of the Patient Protection and Affordable Care Act, referred to as the Community First Choice option, to provide home and community-based attendant services and supports through a State plan.

“Community First Choice is designed to make available home and community-based attendant services and supports to eligible individuals, as needed, to assist in accomplishing activities of daily living (ADLs), instrumental activities of daily living (IADLs), and health-related tasks through hands-on assistance, supervision, or cueing.” 42 C.F.R. § 441.500 (b).

“The commissioner may implement policies and procedures necessary to (1) establish medical homes as provided for in subsection (a) of this section, and (2) pursue optional initiatives or policies authorized pursuant to the Patient Protection and Affordable Care Act, P.L. 111-148, and the Health Care and Education Reconciliation Act of 2010, including, but not limited, to: (A) ... ; (B) ... ; (C) ... ; (D) ... ; (E) ... ; (F) ... ; (G) ... ; (H) the establishment of a “Community First Choice Option”; ....” Conn. Gen. Stat. § 17b-263c (b).

**Community First Choice is an optional State plan service that is operated by the Department.**

3. Title 42, Code of Federal Regulations, Section 441.535 (a) requires in part that States conduct a face-to-face assessment of the individual's needs, strengths, preferences, and goals for the services and supports provided under Community First Choice.

Sections 17b-885 and 17b-887 of the Connecticut General Statutes defines community action agencies and outlines the functions of community action agencies.

Connecticut State Plan Amendment (SPA) No 15-012 provides that Department staff complete an institutional level of care screen, and then refer the individual requesting Community First Choice to contracted entities for assessment; these entities complete the Universal Assessment for the applicant/participant.

**The Department may contract community action agencies to complete Universal Assessments related to the implementation of Community First Choice.**

4. "Assessment information supports the determination that an individual requires Community First Choice and also supports the development of the person-centered service plan and, if applicable, service budget." 42 C.F.R. § 441.535 (b).

"The assessment of functional need must be conducted at least every 12 months, as needed when the individual's support needs or circumstances change significantly necessitating revisions to the person-centered service plan, and at the request of the individual." 42 C.F.R. § 441.535 (c).

**In 2024, Connecticut Community Care, a community service agency contracted by the Department, acted within the scope of the Department's authority when its Universal Care Manager reassessed the Appellant's functional need to determine whether the Appellant continued to require PCA services through Community First Choice.**

5. Title 42, Code of Federal Regulations, Section 441.505 provides in part the following definitions:

*Activities of daily living* (ADLs) means basic personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

*Instrumental activities of daily living* (IADLs) mean activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.

42 C.F.R. § 441.505.

Title 42, Code of Federal Regulations, Section 441.520 (a) provides:

If a State elects to provide Community First choice, the State must provide all of the following services:

1. Assistance with ADLs, IADLs, and health-related tasks through hands-on assistance, supervision, and/or cueing.
2. Acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish ADLs, IADLs, and health-related tasks.
3. Backup systems or mechanisms to ensure continuity of services and supports, as defined in § 441.505 of this subpart.
4. Voluntary training on how to select, manage and dismiss attendants.

42 C.F.R. § 441.520 (a)

Excluded services under Community First Choice are at 42 C.F.R. § 441.525 (b).

6. Title 42, Code of Federal Regulations, Section 441.560 (a) addresses how a service budget must be developed and approved by the State based on the assessment of functional need and person-centered service plan. This section also lists the requirements of the budget.

“Individuals receiving services through [Community First Choice] will not be precluded from receiving other home and community-based long-term care services and supports through the Medicaid State plan, waiver, grant or demonstration *but will not be allowed to receive duplicative services as between [Community First Choice] and any other available source of Medicaid coverage for home and community-based services.*” SPA No 15-012, Attachment 3.1-K, 1.A. (emphasis added).

**Community First Choice participants may not receive PCA service hours that would duplicate the service hours provided through the DDS Waiver.**

**In █████ 2024, the Department correctly avoided duplication of DDS Waiver’s 30 service hours allocated for the Appellant’s IADLs by eliminating the then-16.25 service hours from the Community First Choice budget that had been allocated for the Appellant’s IADLs.**

7. “The State must have procedures in place that will provide safeguards to individuals when the budgeted service amount is insufficient to meet the individual's needs.” 42 C.F.R. § 441.560 (c).

**The State met the requirements of 42 C.F.R. § 441.560 (f) by formalizing the procedure to adjust a budget in Appendix D of the 2016 DRAFT Community First Choice Operating Manual.**

8. “The budget may not restrict access to other medically necessary care and services furnished under the State plan and approved by the State but which are not included in the budget.” 42 C.F.R. § 441.560 (e).

Section 17b § 259b (a) of the Connecticut General Statutes provides:

For purposes of the administration of the medical assistance programs by the Department of Social Services, “medically necessary” and “medical necessity” mean those health services required to prevent, identify, diagnose, treat, rehabilitate or ameliorate an individual's medical condition, including mental illness, or its effects, in order to attain or maintain the individual's achievable

health and independent functioning provided such services are: (1) Consistent with generally-accepted standards of medical practice that are defined as standards that are based on (A) credible scientific evidence published in peer-reviewed medical literature that is generally recognized by the relevant medical community, (B) recommendations of a physician-specialty society, (C) the views of physicians practicing in relevant clinical areas, and (D) any other relevant factors; (2) clinically appropriate in terms of type, frequency, timing, site, extent and duration and considered effective for the individual's illness, injury or disease; (3) not primarily for the convenience of the individual, the individual's health care provider or other health care providers; (4) not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the individual's illness, injury or disease; and (5) based on an assessment of the individual and his or her medical condition.

Conn. Gen. Stat. § 17b-259b (a).

“Clinical policies, medical policies, clinical criteria or any other generally accepted clinical practice guidelines used to assist in evaluating the medical necessity of a requested health service shall be used solely as guidelines and shall not be the basis for a final determination of medical necessity.” Conn. Gen. Stat. § 17b-259b (b).

**The Appellant did not establish for the hearing record that PCA services in excess of 43.75 hours per week to sustain his ADLs are medically necessary, as the term “medically necessary” is defined at Conn. Gen. Stat. § 17b-259b (a).**

**The Department correctly determined that the Appellant was eligible to receive 43.75 hours per week in PCA services through Community First Choice.**

### DECISION

The Appellant’s appeal is DENIED.

*Eva Tar-electronic signature*  
Eva Tar  
Hearing Officer

Cc: [REDACTED]  
Attorney Cynthia Cartier  
Eric Bulewich, Community First Choice  
Hearings@commops.ct.gov

### **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within 15 days of the mailing date of the decision on the grounds there was an error of fact or law, new evidence has been discovered or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to: Department of Social Services, Director, Office of Legal Counsel, Regulations, and Administrative Hearings, 55 Farmington Avenue, Hartford, CT 06105.

### **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision, provided that the petition for reconsideration was filed timely with the Department. The right to appeal is based on § 4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106 or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45-day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee in accordance with § 17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.